IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 339 of 2000.

Date of Decision: 20-9-2007.

State of H.P. Appellant.

Versus

Waryam Singh. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri Chandernarayan Singh, Advocate.

Surinder Singh, J . (oral)

The respondent was tried and acquitted for the offence under Section 41 and 42 of the Indian Forest Act and Section 379 of the Indian Penal Code against which the instant appeal has been filed by the State.

The factual matrix of the instant case is that on 19.3.1992, Inspector Mohinder Singh had received information that khair timber is being smuggled from Raja-Ka-Talab. On this, he formed a raiding party at Jasur thus included Yash Pal and Shyam Lal as independent witnesses and thereafter, proceeded to the spot. During the intervening night of 19 and 20.3.1992, he noticed truck No. HIK-3033 coming from the opposite side which was intercepted. It was found loaded with khair timber. Taking advantage of the darkness, the cleaner of the truck had escaped from the scene. The respondent could not show the permit of the timber, thus, a ruka Exhibit PW2/A was sent for the registration of the case under the aforesaid Sections, on the basis of which FIR Exhibit PW2/D was formally

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Whether reporters of the Local papers are allowed to see the judgment? Yes

registered. The site plan Exhibit pW2/B was prepared. The case property was taken into possession vide memo Exhibit pW2/C and was given on supurdari to N.K. Dutta, Forest Officer, Gangath Block. The truck was said to have loaded with 90 qtls of khair wood. The statements of the witnesses were recorded. Ultimately, the challan was put against the respondent under the aforesaid sections.

The charge was denied by the respondent, he claimed trial and the prosecution examined the witnesses to prove the prosecution case. The respondent was also examined under Section 313 of the Code of Criminal Procedure and the circumstances which were attendant upon them were put to him, were denied. According to him, the truck was wrongly taken into custody. It was parked at Bharmar and had a valid permit to transport the said load of 65 qtls of khair which was not in excess.

The learned trial Court on the perusal of the evidence and upon hearing the ld. counsel for the parties, acquitted the accused.

The State felt aggrieved and filed the instant appeal on the ground that the learned trial Court did not appreciate the evidence of the prosecution in the right perspective.

I have heard Shri V.K. Verma, learned Additional Advocate General and Shri C.N. Singh learned counsel for the respondent. I also re-appraised the evidence on record to find out whether the judgment of acquittal recorded by the learned trial Court is unsustainable.

The bare perusal of the Ruka Exhibit PW2/A shows that Inspector Mohinder Singh had included Yash Pal and Shyam Lal as independent witnesses in the raiding party before proceeding to the spot. There is no reference that any forest official was associated, but if Deputy Ranger was also accompanying the police at the relevant time, then it is not understood as to how the said Deputy Ranger came to know that the Police was proceeding towards Raja-ka-Talab and he met Inspector

Mohinder Singh at Jassur. The very presence of Narinder Kumar Deputy Ranger (PW1) is doubtful for the another reason that his name does not find mentioned in the Ruka Exhibit PW2/A. The said Deputy Ranger had stated that the respondent could not produce any permission of the wood but when confronted with the permit and challan Exhibit P1 and P2, respectively, he expressed his inability without any cogent reasons to pin point that it belonged to the same load which was found in the truck. On the other hand, Shyam Lal (PW4) an independent witness, did not support the case of the prosecution and further made the case of prosecution doubtful because he also did not remember whether the Block Officer aforesaid was with the Police or not.

Contra, the respondent has caused a dent in the prosecution case by examining Kishori Lal (DW1) Senior Assistant from the office of Divisional Forest Officer. He has proved the permit and the challan Exhibit DW1/A in the name of Krishan Chand. Forest Guard Anirudh Kumar (DW2) has admitted the correctness of the challan Exhibit DW2/A which was correct according to the record maintained by him. Perusal of both these documents show that Shri Krishan Chand contractor was authorized to transport more than 500 qtls of khair wood vide permit Exhibit DW1/A. The truck was authorized to carry 65 qtls of khair fire wood vide challan Exhibit DW2/A on the relevant date. There is no evidence on record that it was carrying more than the permitted quantity. No person has been examined in whose presence the weight of the loaded timber was taken. However, both the above documents have proved that the respondent was having a valid permission to transport the said timber. Thus it was not a theft property. Further, Shyam Lal (PW4) an independent witness has not stated about the movement of the timber after the sun-set. The testimony of Block Officer (PW1) cannot be relied upon for the above reason. The sole testimony of Inspector, in view of

these contradictions, and plausible explanation rendered by the respondent, makes the prosecution case doubtful. The learned trial Court took note of all these infirmities in the prosecution case. It up-held the sanctity of the documents DW1/A and DW2/A. Therefore, the view taken by the trial Court for acquitting the respondent is reasonable and is made out from the evidence on record. The impugned judgment is sustainable. Therefore, no interference is required by this Court. Accordingly the appeal is dismissed.

The respondent is discharged of their bail bonds entered at any stage during the trial of this case.

(Surinder Singh)
Judge.

September 20, 2007.
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